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INFO RUEHZO/AFRICAN UNION COLLECTIVE PRIORITY
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RUEHCD/AMCONSUL CIUDAD JUAREZ PRIORITY 0036
RUEAIIA/CIA WASHINGTON DC PRIORITY
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C O N F I D E N T I A L ABUJA 003304

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E.O. 12958: DECL: 12/28/2007

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SUBJECT: OBASANJO AND ATIKU ASK COURTS TO DECIDE

Classified By: Charge d'Affaires Thomas Furey for reason 1.4 (b and d)

¶1. (U) SUMMARY: After three years of political disagreements on a wide range of issues, President Obasanjo and Vice President Atiku yesterday agreed that the Nigerian court should be the arbiter in their latest dispute. Both men filed suits on Dec. 28 in the Nigerian Court of Appeals asking that the courts decide whether the President's declaration that the vice presidency is vacant, following Atiku's nomination for president on the opposition Action Congress (AC) ticket, is constitutional. Although the Appeals Court has yet to specify whether it will accept the case, and if so when it will begin hearings, it is likely that the losing litigant in this case will appeal to the Supreme Court for final adjudication. END SUMMARY.

¶2. (U) The Nigerian Federal government (i.e., Obasanjo) filed its case on December 28 at the Court of Appeals, the country's second highest court, thereby implicitly accepting the fact that the President's declaration that the vice president's seat is vacant is a legal and constitutional issue for the courts to decide. In the suit, the government asks the court to issue an injunction, which would prevent Atiku from representing himself as the Vice President of Nigeria. The government also asked for a second injunction, preventing Atiku from maintaining immunity and recognition as vice president from the National Assembly, INEC, political parties and government agencies.

¶3. (U) The government asked the court to rule on the legality and constitutionality of the removal of Atiku from the position of Vice President based on his switching parties. In addition, the government asked for the court to rule on Atiku's current status, the ability of the president to have or select a vice president from another party, and whether the act of changing parties by the vice president is grounds for removal according to the constitution.

¶4. (U) Vice President Atiku, now vacationing in the United States, also filed his case at the same court on December 28. Atiku asked the court to rule on whether the President has the constitutional power to remove the vice-president. In particular, Atiku asked the court to set aside the president's declaration, uphold his immunity, restrain the government from arresting him, and restrain the National Assembly from considering any nominee from the president to fill the seat of vice-president.

¶5. (C) Comment: The president and vice president appear to have come to agreement on at least one issue: that the courts should decide on the legal and constitutional status of the

Vice President following his nomination by a different party. It is unclear if the appeals court will accept the case and, if so, how fast it will move. Even if it decides to begin its hearings immediately, the process is likely to be drawn out, especially if (as is almost certain) the loser appeals the case to the Supreme Court. In the meantime, everyone is waiting to hear from the Court, in what is likely to be the first phase of Nigeria's most intriguing case since independence.

FUREY